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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91226; File No. SR-BX-2021-003]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Various BX Options Rules

March 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 17, 2021, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 2, Section 10 (Directed Market Makers); Options 3, Section 7 (Types of Orders and Order and Quote Protocols); Options 3, Section 10 (Order Book Allocation); and Options 3, Section 15 (Risk Protections).

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 2, Section 10 (Directed Market Makers); Options 3, Section 7 (Types of Orders and Order and Quote Protocols); Options 3, Section 10 (Order Book Allocation); and Options 3, Section 15 (Risk Protections). Each change will be described below.

Options 2, Section 10

Options 2, Section 10(a), which concerns Directed Market Makers, currently provides, “Market Makers may receive Directed Orders<sup>3</sup> in their appointed classes in accordance with the provisions of this Rule, Directed Market Makers provided they indicated to the Exchange, in a form specified, that they will receive Directed Orders.” The Exchange proposes to amend this sentence to remove the unnecessary phrase “Directed Market Makers” so that the sentence provides, “Market Makers may receive Directed Orders in their appointed classes in accordance with the provisions of this Rule, provided they indicated to the Exchange, in a form specified, that they will receive Directed Orders.” The words “Directed Market Makers” are not necessary and add confusion to the sentence.

Options 3, Section 7

The Exchange proposes to amend Options 3, Section 7(a)(4), which describes a Minimum Quantity Order, to amend the word “require” by making it plural. This grammatical amendment is technical and non-substantive.

The Exchange proposes to amend Options 3, Section 7(a)(4) to describe a Contingency

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<sup>3</sup> Pursuant to Options 3, Section 7(a)(2), a “Directed Order” is an order to buy or sell which has been directed, provided it is properly marked as such, to a particular Market Maker (“Directed Market Maker”).

Order. Today, BX has two order types which have contingencies: (1) Minimum Quantity Orders<sup>4</sup> and (2) All-or-None Orders.<sup>5</sup> The Exchange proposes to formalize the definition of a “Contingency Order” within proposed new Options 3, Section 7(a)(4)(A) to mean Minimum Quantity Orders and All-or-None Orders to bring greater clarity to its rules. The Exchange proposes to state within proposed new Options 3, Section 7(a)(4)(A) that Contingency Orders will only execute against multiple, aggregated orders if the executions would occur simultaneously, which is true of Minimum Quantity Orders and All-or-None Orders today. Today, Minimum Quantity Orders and All-or-None Orders both have a time-in-force designation of Immediate or Cancel and both have a size requirement. A Minimum Quantity Order requires that a specified minimum quantity of contracts be obtained, or the order is cancelled. Similarly, an All-or-None Order is to be executed in its entirety at the specified size or the order will be cancelled. The Contingency Orders execute against multiple, aggregated orders only if the executions would occur simultaneously to ensure that Minimum Quantity Orders and All-or-None Orders are executed at the specified size while also honoring the priority of all other orders on the Order Book. The Exchange is adopting rule text which is similar, in relevant part, to a provision in the definition of Minimum Quantity Order on Cboe Exchange, Inc. (“Cboe”). Cboe Rule 5.6(b) provides, “...Minimum Quantity. A “Minimum Quantity” order is an order that requires a specified minimum quantity of contracts to be executed or is cancelled. Minimum Quantity orders will only execute against multiple, aggregated orders if the executions would occur simultaneously. Only a Book Only order with a Time-in-Force designation of IOC may

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<sup>4</sup> “Minimum Quantity Order” is an order that require that a specified minimum quantity of contracts be obtained, or the order is cancelled. Minimum Quantity Orders are treated as having a time-in-force designation of Immediate or Cancel. Minimum Quantity Orders received prior to the opening cross or after market close will be rejected. See Options 3, Section 7(a)(4).

<sup>5</sup> “All-or-None Order” is a market or limit order which is to be executed in its entirety or not at all. All-or-None Orders are treated as having a time-in-force designation of Immediate or Cancel. All-or-None Orders received prior to the opening or after market close will be rejected. See Options 3, Section 7(a)(7).

have a Minimum Quantity instruction (the System disregards a Minimum Quantity instruction on any other order). Users may not designate bulk messages as Minimum Quantity Orders.” Similar to BX’s Minimum Quantity Orders and All-or-None Orders, Cboe’s Minimum Quantity Orders will only execute against multiple, aggregated orders if the executions would occur simultaneously because of the size contingency.

This amendment will clarify the current rule to more specifically describe the manner in which the System currently handles Contingency Orders on BX. The Exchange notes that the handling of such orders as described by the proposed rule text within Options 3, Section 7(a)(4)(A) is consistent with the Exchange’s allocation methodology within Options 3, Section 10 and description of order types within Options 3, Section 7. The additional clarity makes clear that because of the size requirements of Minimum Quantity Orders and All-or-None Orders, that those orders must be satisfied simultaneously to avoid any priority conflict on the Order Book which considers current displayed NBBO prices to avoid locked and crossed markets as well as trade-throughs.

The Exchange proposes to replace references to the term “Limit Order Price Protection” within Options 3, Section 7 with the correct term, “Order Price Protection.” The Exchange inadvertently referred to a “Limit Order Price Protection” within Options 3, Section 7(a)(1), Options 3, Section 7(b)(3)(B), and Options 3, Section 7(e)(1)(B). The correct name of the risk protection is the “Order Price Protection” as described within Options 3, Section 15(a)(1).<sup>6</sup> At this time the Exchange proposes to amend this term to reflect the correct name of the risk protection.

Finally, the Exchange proposes to renumber the rule from current Options 3, Section 7(a)(9) through (12) to amend the numbering which today does not have an Options 3, Section

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<sup>6</sup> Options 3, Section 15(a)(1) provides in part, “Order Price Protection (“OPP”). OPP is a feature of the System that prevents certain day limit, good til cancelled, and immediate or cancel orders at prices outside of pre-set standard limits from being accepted by the System. OPP applies to all options but does not apply to market orders...”

7(a)(8).

Options 3, Section 10

The Exchange proposes to amend Options 3, Section 10, Order Book Allocation, to conform this rule, in relevant part, to Phlx Options 3, Section 10 as discussed below. In 2019, Phlx revised its allocation rule,<sup>7</sup> which was previously located at Phlx Rule 1089 and has since been relocated to Options 3, Section 10,<sup>8</sup> to conform the location of Phlx's allocation rule to the location of BX's allocation rule. In addition to conforming the structure and certain content of the Phlx rule to BX's rule in the Prior Allocation Rule Change, Phlx made some additional modifications to its rule. At this time, the Exchange proposes to conform certain rule text within BX's allocation rule to Phlx's allocation rule. The Phlx rule text was added within the Prior Allocation Rule Change in order to add specificity to Phlx's allocation rule.

Currently BX Options 3, Section 10(a)(1)(C)(1)(b), which provides for Lead Market Maker allocation, states:

Lead Market Maker ("LMM") Priority: An LMM may be assigned by the Exchange in each option class in accordance with Options 2, Section 3. LMM participant entitlements shall only be in effect when the Public Customer Priority Overlay is also in effect. After all Public Customer orders have been fully executed, upon receipt of an order, provided the LMM's bid/offer is at or improves on the Exchange's disseminated price, the LMM will be afforded a participation entitlement. The LMM shall not be entitled to receive a number of contracts that is greater than the displayed size associated with such LMM. LMM

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<sup>7</sup> See Securities Exchange Act Release No. 86191 (June 28, 2019), 84 FR 31131 (June 24, 2019) (SR-Phlx-2019-20) (Order Granting Approval of Proposed Rule Change Relating to the Allocation and Prioritization of Automatically Executed Trades) ("Prior Allocation Rule Change").

<sup>8</sup> See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

participation entitlements will be considered after the Opening Process. The

LMM participation entitlement is as follows:

The Exchange proposes to amend this rule text, similar to Phlx,<sup>9</sup> to insert the term “quote”<sup>10</sup> in place of the terms “bid”<sup>11</sup> and “offer”<sup>12</sup> in the third sentence. The term “quote” and the term “bid/offer” are, where changes are proposed herein, interchangeable terms that are intended to differentiate “quotes” or “bid/offer” from an “order.”<sup>13</sup> Of note, only BX Market Makers may enter a “quote” or a “bid/offer.” The Exchange’s proposal regarding this amendment is non-substantive as the words proposed to be amended herein are interchangeable.

Further, the Exchange proposes to amend the third sentence of Options 3, Section 10(a)(1)(C)(1)(b) to replace “Exchange’s disseminated price” with “better of the NBBO or internal BBO.” BX Options 3, Section 4, Entry and Display of Quotes, provides, at subparagraph (b)(6), “...A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through, violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.” As further explained within a prior BX rule change,<sup>14</sup>

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<sup>9</sup> See Phlx Options 3, Section 10(a)(1)(B).

<sup>10</sup> See BX Options 1, Section 1(a)(53). The term “quote” or “quotation” mean a bid or offer entered by a Market Maker as a firm order that updates the Market Maker's previous bid or offer, if any.

<sup>11</sup> See BX Options 1, Section 1(a)(7). The term "bid" means a limit order to buy one or more options contracts.

<sup>12</sup> See BX Options 1, Section 1(a)(34). The term "offer" means a limit order to sell one or more options contracts.

<sup>13</sup> See BX Options 1, Section 1(a)(44). The term “order” means a firm commitment to buy or sell options contracts as defined in Section 7 of Options 3.

<sup>14</sup> See Securities Exchange Act Release No. 89476 (August 10, 2020), 85 FR 48274 (August 4, 2020) (SR-BX-2020-017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various BX Rules in Connection With a Technology Migration).

Today, BX re-prices certain orders to avoid locking and crossing away markets, consistent with its Trade-Through Compliance and Locked or Crossed Markets obligations. Orders which lock or cross an away market will automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price. The re-priced order is displayed on OPRA. The order remains on BX's Order Book and is accessible at the non-displayed price. For example, a limit order may be accessed on BX by a Participant if the limit order is priced better than the NBBO. The Exchange believes that the addition of this rule text will allow BX to define an "internal BBO" within its rules when describing re-priced orders that remain on the Order Book and are available at non-displayed prices, which are resting on the Order Book.<sup>15</sup>

BX Options 5, Section 4, Order Routing, describes the repricing of orders for both routable and non-routable orders within Options 5, Section 4(a)(iii)(A), (B) and (C). The Exchange's proposal to use the term "better of the NBBO or the internal BBO" in BX Options 3, Section 10(a)(1)(C)(1)(b) seeks to better articulate current behavior and more closely conform with the concept of re-pricing at an internal BBO described within BX Options 3, Section 4, Entry and Display of Quotes. While this concept of "better of the NBBO or the internal BBO" is currently described in other portions of the BX Rulebook today, the Exchange believes adding context within the allocation rule to the re-priced quotes which remain on BX's Order Book and are accessible at the non-displayed price, will make clear within Options 3, Section 10 that, as is the case today, if the LMM's quote is at or improves on the better of the better of the NBBO or internal BBO, the LMM is entitled to the allocation.<sup>16</sup> While the proposed rule text offers a more

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<sup>15</sup> Id. at 48276.

<sup>16</sup> See Options 3, Section 10(a)(1)(C)(1)(b), as proposed, "An LMM may be assigned by the Exchange in each option class in accordance with Options 2, Section 3. LMM participant entitlements shall only be in effect when the Public Customer Priority Overlay is also in

precise description, the Exchange notes that the current rule text is not inaccurate as an LMM must improve on Exchange's disseminated price. The proposed language also considers a re-priced quote, which may be at a better price on the Order Book but is non-displayed. Today, the re-pricing of quotes permits BX to comply with trade-through rules and prevent locked and crossed markets. This System behavior is not new, rather it is being described in greater detail herein as in other parts of the Rulebook. The proposed change within Options 3, Section 10(a)(1)(C)(1)(b) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within BX Options 3, Section 10(a)(1)(C)(2)(ii)(1) which describes Size Pro-Rata Execution Algorithm.

The Exchange also proposes to amend a paragraph within Options 3, Section 10(a)(1)(C)(1)(b)(1) which currently provides,

Notwithstanding the foregoing, when a Directed Order is received and the DMM's bid/offer is at or improves on the NBBO and the LMM is at the same price level and is not the DMM, the LMM participation entitlement set forth in this subsection (C)(1)(b)(1) will not apply with respect to such Directed Order.

The Exchange proposes to instead provide,<sup>17</sup>

Notwithstanding the foregoing, when a Directed Order is received and the DMM's quote is at or improves on the better of the NBBO or internal BBO and the LMM is at the same price level and is not the DMM, the LMM participation entitlement set forth in this subsection (C)(1)(b)(1) will not apply with respect to such Directed Order.

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effect. After all Public Customer orders have been fully executed, upon receipt of an order, provided the LMM's quote is at or improves on the better of the NBBO or internal BBO, the LMM will be afforded a participation entitlement. The LMM shall not be entitled to receive a number of contracts that is greater than the displayed size associated with such LMM. LMM participation entitlements will be considered after the Opening Process. The LMM participation entitlement is as follows:...". A similar change is proposed within Options 3, Section 10(a)(1)(C)(2)(ii).

<sup>17</sup> The amendment to change the term "bid/offer" to "quote" was described above.

While today, the DMM's quote must be at or improve upon the NBBO as provided for within Options 2, Section 10,<sup>18</sup> the re-pricing of orders would permit a DMM's quote that is at or improves on the better of the NBBO or internal BBO to be subject to the DMM allocation described within Options 3, Section 10(a)(1)(C)(1)(b)(1). As explained above in greater detail, orders which lock or cross an away market will automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price. While the re-priced order is displayed on OPRA that order is accessible on BX's Order Book at the non-displayed price. The proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(iii) which describes the Size Pro-Rata Execution Algorithm, and which is proposed to be renumbered as "(iv)" to account for new rule text proposed herein. The changes described in this paragraph are not System or functionality changes but provide greater clarity as to the way the System functions.

Finally, a similar clarifying change is proposed to be made to Options 3, Section 10(a)(1)(C)(1)(c) (DMM Priority) which relates to BX's Price-Time Execution Algorithm. Similar to what was noted above for Options 3, Section 10(a)(1)(C)(1)(b)(1), the Exchange proposes to amend the paragraph to provide,

A Market Maker which receives a Directed Order is a DMM with respect to that Directed Order. DMM participant entitlements shall only be in effect when the Public Customer Priority Overlay is also in effect. After all Public Customer orders have been fully executed, upon receipt of a Directed Order, provided the

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<sup>18</sup> Options 2, Section 10(a)(1) provides, "When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Market Maker is quoting at or improving the Exchange's disseminated price, the Directed Order shall be automatically executed and allocated in accordance with Options 3, Section 10 such that the Directed Market Maker shall receive a Directed Market Maker participation entitlement provided for therein."

DMM's quote is at or improves on the better of the internal BBO or the NBBO,  
the DMM will be afforded a participation entitlement...<sup>19</sup>

While this proposed change relates to DMM Priority, it is proposed to be changed for the same reasons described herein for LMM Priority. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(iii) which describes the Size Pro-Rata Execution Algorithm.

Currently, BX Options 3, Section 10(a)(1)(C)(1)(b)(1) provides,

(1) A BX Options LMM shall receive the greater of:

(a) contracts the LMM would receive if the allocation was based on time priority pursuant to subparagraph (C)(1)(a) above with Public Customer priority;

(b) 50% of remaining interest if there is one or no other Market Maker at that price;

(c) 40% of remaining interest if there is two other Market Makers at that price;

(d) 30% of remaining interest if there are more than two other Market Makers at that price; or

(e) the Directed Market Maker ("DMM") participation entitlement, if any, set forth in subsection (C)(1)(c) below (if the order is a Directed Order and the LMM is also the DMM).

Rounding will be up to the nearest integer.

Notwithstanding the foregoing, when a Directed Order is received and the DMM's bid/offer is at or improves on the NBBO and the LMM is at the same price level and is not the DMM, the LMM participation entitlement set forth in this subsection (C)(1)(b)(1) will not apply with respect to such Directed Order.

The Exchange proposes to amend Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) to remove the words "or no." Today, if there was no other Market Maker order or quote present, the Lead

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<sup>19</sup> Amending the terms "bid/offer" to the term "quote" in this paragraph was described above.

Market Maker would receive the allocation described within Options 3, Section 10(a)(1)(C)(1)(b)(1)(a) because there would be no other interest present to require a split allocation in this scenario. The removal of the words “or no” would align the rule text to the current System functionality. This proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) relates to BX’s Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(ii)(1)(b) which describes the Size Pro-Rata Execution Algorithm.

The Exchange also proposes to be more specific with the text within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) - (d) by adding the words “order or quote” or “orders or quotes,” as appropriate, after Market Maker because the System is looking for other orders or quotes from a Market Maker to determine the percentage of the allocation that will be provided to that Lead Market Maker. If a Market Maker entered both an order and a quote, the System would count the order and quote from the same Market Maker separately for purposes of determining the number of other Market Makers present for Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) - (d) allocation. This amendment would clarify current System behavior. This proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) - (d) relates to BX’s Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(ii)(1)(b) – (d) which describes the Size Pro-Rata Execution Algorithm.

The Exchange also proposes to correct a grammatical error within BX Options 3, Section 10(a)(1)(C)(1)(b)(1)(c) to correct “is” to “are.”

The Exchange proposes to update the cross-reference within Options 3, Section 10(a)(1)(C)(1)(b)(1)(e), related to BX’s Price-Time Execution Algorithm, and Options 3, Section 10(a)(1)(C)(2)(ii)(1)(e), related to the Size Pro-Rata Execution Algorithm, as the Exchange proposes new rule text with this proposal which impacted the numbering/lettering.

Currently, BX Options 3, Section 10(a)(1)(C)(1)(b)(2), related to BX’s Price-Time Execution Algorithm, provides, “Orders for 5 contracts or fewer shall be allocated to the LMM.

The Exchange will review this provision quarterly and will maintain the small order size at a level that will not allow orders of 5 contracts or less executed by the LMM to account for more than 40% of the volume executed on the Exchange. This provision shall not apply if the order of 5 contracts or fewer is directed to a DMM who is quoting at or better than the NBBO.” The Exchange proposes to replace this language with rule text similar to Phlx Options 3, Section 10(a)(1)(D) and redesignate the provision as BX Options 3, Section 10(a)(C)(1)(c).<sup>20</sup>

Reorganizing this part of the rule to mirror Phlx is not a substantive change. The Exchange is not otherwise amending the System, rather these changes are being made to conform the rule text to Phlx rule text, which more specifically describes the scenarios in which a Lead Market Maker would be entitled to Orders of 5 contracts or fewer.

Similar rule text describing entitlement for order of 5 contracts or fewer replacement is proposed within Options 3, Section 10(a)(1)(C)(2)(iii), relating to the Size Pro-Rata Execution Algorithm, and this rule text will cause current Options 3, Section 10(a)(1)(C)(2)(iii), which describes DMM Priority, to be redesignated as Options 3, Section 10(a)(1)(C)(2)(iv) to account for the new rule text.

With respect to proposed new BX Options 3, Section 10(a)(1)(C)(1)(c), related to the Price-Time Execution Algorithm, and Options 3, Section 10(a)(1)(C)(2)(iii), related to the Size Pro-Rata Execution Algorithm, the Exchange proposes to provide,

The Exchange proposes to provide the Entitlement for Orders of 5 contracts or fewer shall be allocated to the Lead Market Maker as described below. The allocation will only apply after the Opening Process and shall not apply to auctions. A Lead Market Maker is not entitled to receive a number of contracts that is greater than the size that is associated with its quote. On a quarterly basis,

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<sup>20</sup> Current BX Options 3, Section 10(a)(C)(1)(c) relates to DMM Priority, the Exchange also proposes to redesignate that section as new BX Options 3, Section 10(a)(C)(1)(d) to account for the new rule text.

the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 40%.

While the percentage of 40% of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers differs from Phlx, which is 25%,<sup>21</sup> the Exchange notes it is retaining BX's current percentage which is specified within current BX Options 3, Section 10(a)(1)(C)(1)(b)(2), related to the Price-Time Execution Algorithm, and current Options 3, Section 10(a)(1)(C)(2)(ii)(2), related to the Size Pro-Rata Execution Algorithm.

With respect to proposed new BX Options 3, Section 10(a)(1)(C)(1)(c)(1), related to the Price-Time Execution Algorithm, and Options 3, Section 10(a)(1)(C)(2)(iii)(1), related to the Size Pro-Rata Execution Algorithm, the Exchange proposes to provide,

A Lead Market Maker is entitled to priority with respect to Orders of 5 contracts or fewer, including when the Lead Market Maker is also the Directed Market Maker, if the Lead Market Maker has a quote at the better of the internal BBO or the NBBO, with no other Public Customer or Directed Market Maker interest with a higher priority.

Of note, Phlx describes the manner in which All-or-None Orders are handled in its related rule,<sup>22</sup> which order type differs on BX. Also, the term "PBBO" is similar to BX's term "BBO".

With respect to proposed new BX Options 3, Section 10(a)(1)(C)(1)(c)(2), related to the

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<sup>21</sup> See Phlx Options 3, Section 10(a)(1)(D).

<sup>22</sup> Phlx has All-or-None Orders which are permitted to rest on the Order Book. See Phlx Options 3, Section 7(b)(5). BX's All-or-None Orders must be executed in its entirety or not at all and do not rest on the Order Book. See BX Options 3, Section 7(a)(8). Because BX's All-or-None Orders do not rest on the Order Book, the treatment of such orders would be different on the two markets (Phlx and BX) and therefore it is consistent to align its treatment of order types within the allocation rule with its treatment of those orders pursuant to BX Options 3, Section 7.

Price-Time Execution Algorithm, the Exchange proposes to provide:

If the Lead Market Maker's quote is at the better of the internal BBO or the NBBO, with other Public Customer (including when the Lead Market Maker is also the Directed Market Maker) or other Directed Market Maker interest with a higher priority at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer; thereafter orders will be allocated pursuant to paragraph (a)(1)(C)(1)(e).

Similar rule text, with the appropriate cross-reference, is proposed within Options 3, Section 10(a)(1)(C)(2)(iii)(2), related to the Size Pro-Rata Execution Algorithm.<sup>23</sup> Similar to the aforementioned paragraph, All-or-None Orders are handled differently on Phlx and BX, and the term "PBBO" is similar to BX's term "BBO".

As is the case today, in order to be entitled to receive Orders for 5 contracts or fewer, the Lead Market Maker's quote must be at the better of the internal BBO or the NBBO with no other Public Customer or Directed Market Maker interest which has a higher priority. If the Lead Market Maker is quoting at the better of the internal BBO or the NBBO with other Public Customer or Directed Market Maker interest present which has a higher priority at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer, however the Lead Market Maker is eligible to receive such contracts pursuant to paragraph (a)(1)(C)(1)(b)(1)(e) for Price-Time Execution, and paragraph (a)(1)(C)(2)(vi) for Size Pro-Rata Execution, which describe the treatment of all other remaining interest after Lead Market Maker and Directed Market Maker allocations. The Lead Market Maker would be

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<sup>23</sup> Options 3, Section 10(a)(1)(C)(2)(iii)(2) proposes to provide, "(2) If the Lead Market Maker's quote is at the better of the internal BBO, excluding All-or-None Orders that cannot be satisfied, or the NBBO, with other Public Customer (including when the Lead Market Maker is also the Directed Market Maker) or other Directed Market Maker interest with a higher priority at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer, however the Lead Market Maker is eligible to receive such contracts pursuant to paragraph (a)(1)(C)(2)(v); thereafter orders will be allocated pursuant to paragraph (a)(1)(C)(2)(vi).

entitled to the entire allocation of the Order of 5 contracts or fewer where the Lead Market Maker is also the Directed Market Maker and the Lead Market Maker receives the Directed Order and has a quote at the best price (described as the better of the internal BBO or the NBBO) at the time the Directed Order was received. This means that no other interest, including Public Customer or Directed Market Maker interest is present with a higher priority, if the Lead Market Maker is to receive the allocation.

If, for example, a Public Customer is resting at the NBBO at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer. The Lead Market Maker will continue to not be entitled to priority with respect to allocation of Orders of 5 contracts or fewer because there is interest present with a higher priority or because the Lead Market Maker is not quoting at the NBBO. In these situations, the Lead Market Maker is eligible to receive such contracts pursuant to paragraph (a)(1)(C)(1)(b)(1)(e) for Price-Time Execution and paragraph (a)(1)(C)(2)(vi) for Size Pro-Rata Execution, which both describe the treatment of all other remaining interest after Lead Market Maker and Directed Market Maker allocations.

This is the manner in which the System behaves today and the rule is being amended to expand upon the current text, similar to Phlx, and provide additional granularity as to the circumstances in which a Lead Market Maker would be entitled to an allocation for Orders of 5 contracts or fewer.<sup>24</sup>

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<sup>24</sup> Phlx's similar rule text at Phlx Options 3, Section 10(a)(1)(D) is similar, however Phlx's rule has a different percentage than proposed for BX, despite the execution algorithm. Phlx provides that on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 25%. BX's rules both provide that on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 40%. Also, as noted herein, All-or-None Orders are handled differently on Phlx and BX, and the term "PBBO" is similar to BX's term "BBO".

The Exchange proposes to amend current Options 3, Section 10(a)(1)(C)(1)(c) (DMM Priority), related to Price-Time Execution, which will be redesignated as “d”, to capitalize the term “Opening Process,” which is capitalized elsewhere in the rule. A similar change is proposed within current Options 3, Section 10(a)(1)(C)(2)(iii) (DMM Priority), related to Size Pro-Rata Execution, which will be redesignated as “iv.”

The Exchange proposes to add a title to current BX Options 3, Section 10(a)(1)(C)(1)(d), “All Other Remaining Interest,” similar to Phlx Options 3, Section 10(a)(1)(d), and redesignate this section as “e”. The Exchange also proposes to redesignate current BX Options 3, Section 10(a)(1)(C)(1)(e) as “f”.

Current Options 3, Section 10(a)(1)(C)(2)(iv) (Market Maker Priority), related to Size Pro-Rata Execution, is proposed to be renumbered as “(v).”

The Exchange proposes to relocate the last sentence of current Options 3, Section 10(a)(1)(C)(2)(iv) to new Options 3, Section 10(a)(1)(C)(2)(vi) with the Size Pro-Rata Execution Algorithm to conform the rule text to Phlx’s rule text and add the title “All Other Remaining Interest” to provide,

If there are contracts remaining after all Market Maker interest has been fully executed, such contracts shall be executed based on the Size Pro-Rata execution algorithm.

The Exchange notes that this same paragraph currently exists within BX Options 3, Section 10(a)(1)(C)(1)(e), related to Price-Time Execution, but those paragraphs differ because a Market Maker Priority overlay does not exist in the Price-Time Execution Algorithm on BX, but it does exist in the Size Pro-Rata Execution Algorithm on BX.

Finally, current Options 3, Section 10(a)(1)(C)(2)(v), related to Size Pro-Rata Execution, is proposed to be renumbered as “(vii).”

#### Options 3, Section 15(b)(1)

Today, the Exchange offers an Acceptable Trade Range (“ATR”) risk protection that sets

dynamic boundaries within which quotes and orders may trade, and is designed to prevent the Exchange's System from experiencing dramatic price swings by preventing the execution of quotes and orders beyond the thresholds set by the protection.

As presently set forth in Options 3, Section 15(b)(1), the System will calculate an ATR to limit the range of prices at which an order will be allowed to execute. ATR is calculated by taking the reference price, plus or minus a value to be determined by the Exchange (i.e., the reference price – (x) for sell orders and the reference price + (x) for buy orders).<sup>25</sup> Upon receipt of a new order, the reference price is the National Best Bid (“NBB”) for sell orders and the National Best Offer (“NBO”) for buy orders or the last price at which the order is posted, whichever is higher for a buy order or lower for a sell order.<sup>26</sup> If an order reaches the outer limit of the ATR (the “Threshold Price”) without being fully executed pursuant to Options 3, Section 15(b)(1)(A), it will be posted at the Threshold Price for a brief period, not to exceed one second (“Posting Period”), to allow more liquidity to be collected. Upon posting, either the current Threshold Price of the order or an updated NBB for buy orders or the NBO for sell orders (whichever is higher for a buy order or lower for a sell order) then becomes the reference price for calculating a new ATR. If the order remains unexecuted, a new ATR will be calculated and the order will execute, route, or post up to the new Threshold Price. This process will repeat until either i) the order/quote is executed, cancelled, or posted at its limit price or ii) the order has been subject to a configurable number of instances of the ATR as determined by the Exchange (in which case it will be returned).<sup>27</sup> During the Posting Period, pursuant to Options 3, Section

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<sup>25</sup> ATR settings are tied to the option premium.

<sup>26</sup> In the event of a crossed ABBO, ATR will use the NBO instead of the NBB for incoming sell orders and the NBB instead of the NBO for incoming buy orders as the reference price, unless the order's last posted price is more aggressive than the NBO (for the sell order) or the NBB (for the buy order).

<sup>27</sup> In the case of “Do Not Route” or “DNR” Orders that are locked against the ABBO, such orders will pause their ATR iterations (i.e., a new ATR will not be calculated based on the reference price at that time) and remain this way until the ATR process can be completed.

15(b)(1)(B), the Exchange will disseminate as a quotation: (i) the Threshold Price for the remaining size of the order triggering the ATR and (ii) on the opposite side of the market, the best price will be displayed using the “non-firm” indicator message in accordance with the specifications of the network processor.<sup>28</sup> Following the final Posting Period, the Exchange will return to a normal trading state and disseminate its best bid and offer.

The Exchange now proposes to add that ATR will not be available for All-or-None Orders (“AONs”)<sup>29</sup> or Minimum Quantity Orders (“MQOs”).<sup>30</sup> Although this change reflects current functionality, the rule is silent in this regard. The Exchange does not believe that ATR is necessary for AONs or MQOs because by definition, these orders types must meet a sufficient size requirement before executing. As described above, applying ATR may result in an order receiving partial executions at multiple price points. The Exchange therefore believes that it would contradict the explicit instructions of a BX Participant using AONs and MQOs to apply ATR to these order types. The following examples illustrate how the ATR protection applies today:

### **Example 1**

1. ATR band in this price range is set to \$0.07
2. Assume the following market:
  - a. MM1 Quote sets BBO 2.00 (10) x 2.12 (10)
  - b. MM2 Quote 1.99 (10) x 2.13 (10)
  - c. MM3 Quote 1.98 (10) x 2.13 (10)
  - d. Customer Order to Buy 10 @ 1.97

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<sup>28</sup> During ATR iterations, route timers continue to run and “firm” quote posting can occur if, for example, the order is re-priced one minimum price variant away from the ABBO pursuant to Options 3, Section 5(d) to comply with applicable Trade-Through and Locked/Crossed market restrictions, in which case the quotation will disseminate as a “firm” quote.

<sup>29</sup> See note 5 above.

<sup>30</sup> See note 4 above.

- e. Firm Order to Buy 10 @ 1.93
  - f. BD Order to Buy 10 @ 1.92 (this is .01 past ATR band since  $2.00 - 0.07 = 1.93$ )
3. Incoming AON Order to Sell 60 @ 1.92
  4. The incoming AON trades with all of the bids layering the book, trading its total of 60 contracts without regard to the ATR band

### **Example 2**

1. ATR band in this price range is set to \$0.07
2. Assume the following market:
  - a. MM1 Quote sets BBO 2.00 (10) x 2.12 (10)
  - b. MM2 Quote 1.99 (10) x 2.13 (10)
  - c. MM3 Quote 1.98 (10) x 2.13 (10)
  - d. Customer Order to Buy 10 @ 1.97
  - e. Firm Order to Buy 10 @ 1.93
  - f. BD Order to Buy 10 @ 1.92 (this is .01 past ATR band since  $2.00 - 0.07 = 1.93$ )
3. Incoming DAY Order to Sell 100 @ 1.92
4. The incoming DAY Order trades at each price level down to 1.93, for a total of 50 contracts, but does not trade with the resting interest at 1.92 yet
5. DAY Order then posts at the ATR band of 1.93 during the ATR Posting Period
6. After the ATR Posting Period concludes, the DAY Order trades with the BD Order @ 1.92
7. Remainder of the DAY Order now books at its limit price of 1.92 as there is no more tradeable interest

Lastly, the Exchange proposes the following minor, corrective changes in paragraph (b)(1)(A) of Options 3, Section 15 to replace: (i) “New Acceptable Trade Range” with “new Acceptable Trade Range,” and (ii) “new Acceptable Trade Range Threshold Price” with “new Threshold Price” to conform to the defined term.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>31</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>32</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

### Options 2, Section 10

The Exchange's proposal to amend Options 2, Section 10(a) to remove inadvertent wording is consistent with the Act because the removal of the wording will make the rule text easier to understand.

### Options 3, Section 7

The Exchange's proposal to amend Options 3, Section 7(a)(4) to make the term "require" plural is technical and non-substantive.

The Exchange's proposal to amend Options 3, Section 7 to describe a Contingency Order is consistent with the Act because it adds more context to the current rules. Today, BX has two order types which have contingencies: (1) Minimum Quantity Orders and (2) All-or-None Orders. The Exchange proposes to formalize the definition of a "Contingency Order" within proposed new Options 3, Section 7(a)(4)(A) to mean Minimum Quantity Orders and All-or-None Orders to bring greater clarity to its rules. The Exchange proposes to state within proposed new Options 3, Section 7(a)(4)(A) that Contingency Orders will only execute against multiple, aggregated orders if the executions would occur simultaneously, which is true of Minimum Quantity Orders and All-or-None Orders today.<sup>33</sup>

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<sup>31</sup> 15 U.S.C. 78f(b).

<sup>32</sup> 15 U.S.C. 78f(b)(5).

<sup>33</sup> Today, Minimum Quantity Orders and All-or-None Orders both have a time-in-force designation of Immediate or Cancel and both have a size requirement. A Minimum Quantity Order requires that a specified minimum quantity of contracts be obtained, or

The Exchange's proposal to adopt rule text which more clearly explains how the System executes Minimum Quantity Orders and All-or-None Orders, which both have a size requirement, within the Order Book protects investors and the public interest because it adds specificity to the rules with respect to current System handling. Specifically, this amendment will clarify the current rule to more specifically describe the manner in which the System currently handles Contingency Orders on BX. The Exchange notes that the handling of such orders as described by the proposed rule text within Options 3, Section 7(a)(4)(A) is consistent with the Exchange's allocation methodology within Options 3, Section 10 and description of order types within Options 3, Section 7. The additional clarity makes clear that because of the size requirements of Minimum Quantity Orders and All-or-None Orders, that those orders must be satisfied simultaneously to avoid any priority conflict on the Order Book which considers current displayed NBBO prices to avoid locked and crossed markets as well as trade-throughs. Also, BX is adopting rule text which is similar, in relevant part, to a provision in the definition of Minimum Quantity Order to Cboe Rule 5.6(b). Similar to BX's Minimum Quantity Orders and All-or-None Orders, Cboe's Minimum Quantity Orders will only execute against multiple, aggregated orders if the executions would occur simultaneously because of the size contingency.

The Exchange's proposal to replace references to the term "Limit Order Price Protection" within Options 3, Section 7 with the correct term, "Order Price Protection" is consistent with the Act. Amending the inadvertent references to a "Limit Order Price Protection" within Options 3, Section 7(a)(1), Options 3, Section 7(b)(3)(B), and Options 3, Section 7(e)(1)(B) to the correct name of the risk protection will bring clarity to these cross-references.

#### Options 3, Section 10

The Exchange proposes to amend Options 3, Section 10, Order Book Allocation, to conform this rule, in relevant part, to Phlx Options 3, Section 10 as discussed herein. The

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the order is cancelled. Similarly, an All-or-None Order is to be executed in its entirety at the specified size or the order will be cancelled.

Exchange's proposal to amend rule text, similar to Phlx,<sup>34</sup> to insert the term "quote" in place of the terms "bid" and "offer" in the third sentence is consistent with the Act. The term "quote" and the term "bid/offer" are, where changes are proposed herein, interchangeable terms that are intended to differentiate "quotes" or "bid/offer" from an "order." Of note, only BX Market Makers may enter a "quote" or a "bid/offer." The Exchange's proposal regarding this amendment is non-substantive as the words proposed to be amended herein are interchangeable.

The Exchange's proposal to amend the third sentence of Options 3, Section 10(a)(1)(C)(1)(b) to replace "Exchange's disseminated price" with "better of the NBBO or internal BBO" is consistent with the Act because amending the rule text will protect investors and the general public by making clear that a re-priced order is accessible on BX's Order Book at the non-displayed price. Today, BX re-prices certain orders to avoid locking and crossing away markets, consistent with its Trade-Through Compliance and Locked or Crossed Markets obligations. Orders which lock or cross an away market will automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price. The re-priced order is displayed on OPRA. The order remains on BX's Order Book and is accessible at the non-displayed price. The Exchange believes that the addition of this rule text will allow BX to define an "internal BBO" within its rules when describing re-priced orders that remain on the Order Book and are available at non-displayed prices while resting on the Order Book.<sup>35</sup> The proposed rule text will make clear within Options 3, Section 10 that, as is the case today, if the LMM's quote is at or improves on the better of the better of the NBBO or internal BBO, the LMM is entitled to the allocation. The proposed rule text is a more precise description which

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<sup>34</sup> See Phlx Options 3, Section 10(a)(1)(B).

<sup>35</sup> BX Options 5, Section 4, Order Routing, describes the repricing of orders for both routable and non-routable orders within Options 5, Section 4(a)(iii)(A), (B) and (C). The Exchange's proposal seeks to conform the concept of re-pricing and an internal BBO, which is described within BX Options 3, Section 4, Entry and Display of Quotes with the proposed change to BX Options 3, Section 10(a)(1)(C)(1)(b).

better articulates current behavior, although the Exchange notes that the current rule text is not inaccurate as an LMM must improve on Exchange's disseminated price. This System behavior is not new, rather it is being described in greater detail herein as in other parts of the Rulebook.<sup>36</sup>

Similarly, the Exchange's proposal to amend a paragraph within Options 3, Section 10(a)(1)(C)(1)(b)(1) to change "...is at or improves on the NBBO..." to "...is at or improves on the better of the NBBO or internal BBO" is consistent with the Act. While today, the DMM's quote must be at or improve upon the NBBO as provided for within Options 2, Section 10,<sup>37</sup> the re-pricing of orders would permit a DMM's quote that is at or improves on the better of the NBBO or internal BBO to be subject to the DMM allocation described within Options 3, Section 10(a)(1)(C)(1)(b)(1).<sup>38</sup> The changes described in this paragraph are not System or functionality changes but provide greater clarity as to the way the System functions.

Finally, a similar clarifying change proposed to be made to Options 3, Section 10(a)(1)(C)(1)(c) (DMM Priority), which relates to BX's Price-Time Execution Algorithm, is also consistent with the Act. Similar to what was noted above for Options 3, Section 10(a)(1)(C)(1)(b)(1), the Exchange proposes to amend the paragraph related to DMM Priority for the same reasons described herein for LMM Priority.<sup>39</sup>

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<sup>36</sup> The proposed change within Options 3, Section 10(a)(1)(C)(1)(b) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within BX Options 3, Section 10(a)(1)(C)(2)(ii) which describes Size Pro-Rata Execution Algorithm.

<sup>37</sup> Options 2, Section 10(a)(1) provides, "When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Market Maker is quoting at or improving the Exchange's disseminated price, the Directed Order shall be automatically executed and allocated in accordance with Options 3, Section 10 such that the Directed Market Maker shall receive a Directed Market Maker participation entitlement provided for therein."

<sup>38</sup> The proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(iii) which describes the Size Pro-Rata Execution Algorithm, and which is proposed to be renumbered as "(iv)" to account for new rule text proposed herein.

<sup>39</sup> A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(iii) which describes the Size Pro-Rata Execution Algorithm

The Exchange proposal to amend BX Options 3, Section 10(a)(1)(C)(1)(b)(1) to remove the words “or no” is consistent with the Act as the proposed change will bring greater clarity to the Exchange’s rule. Today, if there was no other Market Maker order or quote present, the Lead Market Makers would receive the allocation based described within Options 3, Section 10(a)(1)(C)(1)(b)(1)(a) because there would be no other interest present to require a split allocation in this scenario. Further, the removal of the words “or no” would align the rule text to the current System functionality.<sup>40</sup>

The Exchange’s proposal to be more specific with the text within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) - (d) by adding the words “order or quote” or “orders or quotes,” as appropriate, after Market Maker because the System is looking for other orders or quotes from a Market Maker to determine the percentage of the allocation that will be provided to that Lead Market Maker is consistent with the Act. If a Market Maker entered both an order and a quote, the System would count the order and quote from the same Market Maker separately for purposes of determining the number of other Market Makers present for Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) - (d) allocation. This amendment would clarify current System behavior for the protection of investors and the general public.<sup>41</sup>

The Exchange’s proposal to reorganize BX Options 3, Section 10(a)(1)(C)(1)(b)(2),<sup>42</sup> related to BX’s Price-Time Execution Algorithm, and replace this language with rule text similar

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<sup>40</sup> This proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) relates to BX’s Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(ii)(1)(b) which describes the Size Pro-Rata Execution Algorithm

<sup>41</sup> This proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) - (d) relates to BX’s Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(ii)(1)(b) – (d) which describes the Size Pro-Rata Execution Algorithm.

<sup>42</sup> Similar rule text describing entitlement for order of 5 contracts or fewer replacement is proposed within Options 3, Section 10(a)(1)(C)(2)(iii), relating to the Size Pro-Rata Execution Algorithm, and this rule text will cause current Options 3, Section 10(a)(1)(C)(2)(iii) which describes DMM Priority, to be redesignated as Options 3, Section 10(a)(1)(C)(2)(iv) to account for the new rule text.

to Phlx Options 3, Section 10(a)(1)(D) and redesignate the provision as BX Options 3, Section 10(a)(C)(1)(c)<sup>43</sup> is consistent with the Act. Reorganizing this part of the rule to mirror Phlx is not a substantive change. The Exchange is not otherwise amending the System, rather these changes are being made to conform the rule text to Phlx rule text, which more specifically describes the scenarios in which a Lead Market Maker would be entitled to Orders of 5 contracts or fewer.

With respect to proposed new BX Options 3, Section 10(a)(1)(C)(1)(c), related to the Price-Time Execution Algorithm, and Options 3, Section 10(a)(1)(C)(2)(iii), related to the Size Pro-Rata Execution Algorithm, the Exchange notes it is retaining BX's current percentage which is specified within current BX Options 3, Section 10(a)(1)(C)(1)(b)(2), related to the Price-Time Execution Algorithm, and current Options 3, Section 10(a)(1)(C)(2)(ii)(2), related to the Size Pro-Rata Execution Algorithm.<sup>44</sup> The Exchange also proposes to adopt similar Phlx provisions into Options 3, Section 10(a)(1)(C)(1)(c)(1), related to the Price-Time Execution Algorithm, and Options 3, Section 10(a)(1)(C)(2)(iii)(1). Finally, the Exchange proposes to adopt similar Phlx provisions into new BX Options 3, Section 10(a)(1)(C)(1)(c)(2), related to the Price-Time Execution Algorithm and new Options 3, Section 10(a)(1)(C)(2)(iii)(2), related to the Size Pro-Rata Execution Algorithm, with respectively appropriate cross-references.

As is the case today, in order to be entitled to receive Orders for 5 contracts or fewer, the

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<sup>43</sup> Current BX Options 3, Section 10(a)(C)(1)(c) relates to DMM Priority, the Exchange also proposes to redesignate that section as new BX Options 3, Section 10(a)(C)(1)(d) to account for the new rule text.

<sup>44</sup> Phlx's similar rule text at Phlx Options 3, Section 10(a)(1)(D) is similar, however Phlx's rule has a different percentage than proposed for BX, despite the execution algorithm. Phlx provides that on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 25%. BX's rules both provide that on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 40%. Also, as noted herein, All-or-None Orders are handled differently on Phlx and BX, and the term "PBBO" is similar to BX's term "BBO".

Lead Market Maker's quote must be at the better of the internal BBO or the NBBO with no other Public Customer or Directed Market Maker interest which has a higher priority. If the Lead Market Maker is quoting at the better of the internal BBO or the NBBO with other Public Customer or Directed Market Maker interest present which has a higher priority at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer, however the Lead Market Maker is eligible to receive such contracts pursuant to paragraph (a)(1)(C)(1)(b)(1)(e) for Price-Time Execution, and paragraph (a)(1)(C)(2)(vi) for Size Pro-Rata Execution, which describe the treatment of all other remaining interest after Lead Market Maker and Directed Market Maker allocations. The Lead Market Maker would be entitled to the entire allocation of the Order of 5 contracts or fewer where the Lead Market Maker is also the Directed Market Maker and the Lead Market Maker receives the Directed Order and has a quote at the best price (described as the better of the internal BBO or the NBBO) at the time the Directed Order was received. This means that no other interest, including Public Customer or Directed Market Maker interest is present with a higher priority, if the Lead Market Maker is to receive the allocation. If, for example, a Public Customer is resting at the NBBO at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer. The Lead Market Maker will continue to not be entitled to priority with respect to allocation of Orders of 5 contracts or fewer because there is interest present with a higher priority or because the Lead Market Maker is not quoting at the NBBO. In these situations, the Lead Market Maker is eligible to receive such contracts pursuant to paragraph (a)(1)(C)(1)(b)(1)(e) for Price-Time Execution and paragraph (a)(1)(C)(2)(vi) for Size Pro-Rata Execution, which both describe the treatment of all other remaining interest after Lead Market Maker and Directed Market Maker allocations. This is the manner in which the System behaves today and the proposed new rule text which is being amended to expand upon the current text, similar to Phlx, will provide additional granularity as to the circumstances in which a Lead

Market Maker would be entitled to an allocation for Orders of 5 contracts or fewer<sup>45</sup> for the protection of investors and the general public.

The remainder of the proposed rule changes within Options 3, Section 10 which include renumbering, capitalizations, relocation of rule text, addition of headers and technical amendments are non-substantive.

#### Options 3, Section 15

The Exchange believes that its proposal to amend the ATR rule in Options 3, Section 15(b)(1) would promote just and equitable principles of trade as well as protect investors and the public interest. The Exchange notes that the ATR functionality, including the exclusion of certain size contingency order types from ATR protections, is not new or novel, and is available on other options exchanges.<sup>46</sup> The proposed rule change codifies existing ATR functionality by providing that ATR will not be available for AONs and MQOs. Although this change reflects current functionality, the existing rule is silent in this regard. As discussed above, the Exchange does not believe that ATR is necessary for AONs or MQOs because by definition, these orders types must meet a sufficient size requirement before executing. Because ATR may result in an order receiving partial executions at multiple price points, the Exchange believes that it would contradict the explicit instructions of a Participant using AONs and MQOs to apply ATR to these order types. Accordingly, the proposed changes would add greater

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<sup>45</sup> Phlx's similar rule text at Phlx Options 3, Section 10(a)(1)(D) is similar, however Phlx's rule has a different percentage than proposed for BX, despite the execution algorithm. Phlx provides that on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 25%. BX's rules both provide that on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 40%. Also, as noted herein, All-or-None Orders are handled differently on Phlx and BX, and the term "PBBO" is similar to BX's term "BBO".

<sup>46</sup> See, e.g., Nasdaq ISE ("ISE") Options 3, Section 15(a)(2)(A) (providing that ISE's ATR will not be available for AONs).

transparency and internal consistency to Exchange rules regarding the interaction of AONs and MQOs with this risk protection, and therefore provide more certainty to Participants as to the application of the rule. The Exchange also notes that AONs and MQOs are still subject to other Exchange risk protections like the Order Price Protection (“OPP”)<sup>47</sup> and Market Order Spread Protection (“MOSP”)<sup>48</sup> that are designed to prevent executions at far away prices. As such, the Exchange believes that its proposal will continue to protect investors by limiting executions that are away from prevailing market prices.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Options 3, Section 7

The Exchange’s proposal amend Options 3, Section 7 to describe a Contingency Order does not impose an undue burden on competition because it adds more context to the current rules. Contingency Orders will trade against bids layering the order book to satisfy their size contingency to the extent that such size may be simultaneously executed against multiple orders on the order book in the aggregate for that contingency order. The Exchange believes that the addition of this rule text adds specificity to the rules with respect to current System handling. The proposal to renumber the rule is non-substantive.

The Exchange’s proposal to replace references to the term “Limit Order Price Protection” within Options 3, Section 7 with the correct term, “Order Price Protection” does not impose an undue burden on competition. Amending the inadvertent references to a “Limit Order Price Protection” within Options 3, Section 7(a)(1), Options 3, Section 7(b)(3)(B), and Options 3, Section 7(e)(1)(B) to the correct name of the risk protection will bring clarity to these cross-references.

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<sup>47</sup> See Options 3, Section 15(a)(1).

<sup>48</sup> See Options 3, Section 15(a)(2).

### Options 3, Section 10

The Exchange's proposal to amend Options 3, Section 10, Order Book Allocation, in relevant part as discussed herein, to conform this rule to Phlx Options 3, Section 10, does not impose an undue burden on competition, rather it will bring greater clarity to BX's allocation rule.

The Exchange's proposal to amend rule text, similar to Phlx,<sup>49</sup> to insert the term "quote" in place of the terms "bid" and "offer" does not impose an undue burden on competition. The term "quote" and the term "bid/offer" are, where changes are proposed herein, interchangeable terms that are intended to differentiate "quotes" or "bid/offer" from an "order."<sup>50</sup> Of note, only BX Market Makers may enter a "quote" or a "bid/offer." The Exchange's proposal regarding this amendment is non-substantive as the words proposed to be amended herein are interchangeable.

The Exchange's proposal to amend the third sentence of Options 3, Section 10(a)(1)(C)(1)(b) to replace "Exchange's disseminated price" with "better of the NBBO or internal BBO" does not impose an undue burden on competition because amending the rule text will make clear that a re-price order is accessible on BX's Order Book at the non-displayed price. Today, BX re-prices certain orders to avoid locking and crossing away markets, consistent with its Trade-Through Compliance and Locked or Crossed Markets obligations. Orders which lock or cross an away market will automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price. The re-priced order is displayed on OPRA. The order remains on BX's Order Book and is accessible at the non-displayed price. The Exchange believes that the addition of this rule text will allow BX to define an "internal

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<sup>49</sup> See Phlx Options 3, Section 10(a)(1)(B).

<sup>50</sup> See BX Options 1, Section 1(a)(44). The term "order" means a firm commitment to buy or sell options contracts as defined in Section 7 of Options 3.

BBO” within its rules when describing re-priced orders that remain on the Order Book and are available at non-displayed prices, which are resting on the Order Book.<sup>51</sup> The proposed rule text will make clear within Options 3, Section 10 that, as is the case today, if the LMM’s quote is at or improves on the better of the better of the NBBO or internal BBO, the LMM is entitled to the allocation. The proposed rule text is a more precise description, although the Exchange notes that the current rule text is not inaccurate as an LMM must improve on Exchange’s disseminated price.

Similarly, the Exchange’s proposal to amend a paragraph within Options 3, Section 10(a)(1)(C)(1)(b)(1) does not impose an undue burden on competition. While today, the DMM’s quote must be at or improve upon the NBBO as provided for within Options 2, Section 10,<sup>52</sup> the re-pricing of orders would permit a DMM’s quote that is at or improves on the better of the NBBO or internal BBO to be subject to the DMM allocation described within Options 3, Section 10(a)(1)(C)(1)(b)(1).<sup>53</sup>

A similar change to Options 3, Section 10(a)(1)(C)(1)(c) (DMM Priority) which relates to BX’s Price-Time Execution Algorithm does not impose an undue burden on competition. Similar to what was noted above for Options 3, Section 10(a)(1)(C)(1)(b)(1), the Exchange’s

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<sup>51</sup> BX Options 5, Section 4, Order Routing, describes the repricing of orders for both routable and non-routable orders within Options 5, Section 4(a)(iii)(A), (B) and (C). The Exchange’s proposal seeks to conform the concept of re-pricing and an internal BBO, which is described within BX Options 3, Section 4, Entry and Display of Quotes with the proposed change to BX Options 3, Section 10(a)(1)(C)(1)(b).

<sup>52</sup> Options 2, Section 10(a)(1) provides, “When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Market Maker is quoting at or improving the Exchange's disseminated price, the Directed Order shall be automatically executed and allocated in accordance with Options 3, Section 10 such that the Directed Market Maker shall receive a Directed Market Maker participation entitlement provided for therein.”

<sup>53</sup> The proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1) relates to BX’s Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(iii) which describes the Size Pro-Rata Execution Algorithm, and which is proposed to be renumbered as “(iv)” to account for new rule text proposed herein.

proposal amends the paragraph related to DMM Priority for the same reasons described herein for LMM Priority.<sup>54</sup>

The Exchange proposal to amend BX Options 3, Section 10(a)(1)(C)(1)(b)(1) to remove the words “or no” does not impose an undue burden on competition as the proposed change will bring greater clarity to the Exchange’s rule. Today, if there was no other Market Maker order or quote present, the Lead Market Makers would receive the allocation based described within Options 3, Section 10(a)(1)(C)(1)(b)(1)(a) because there would be no other interest present to require a split allocation in this scenario.

The Exchange’s proposal to be more specific with the text within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) - (d) by adding the words “order or quote” or “orders or quotes,” as appropriate, after Market Maker because the System is looking for other orders or quotes from a Market Maker to determine the percentage of the allocation that will be provided to that Lead Market Maker does not impose an undue burden on competition. If a Market Maker entered both an order and a quote, the System would count the order and quote from the same Market Maker separately for purposes of determining the number of other Market Makers present for Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) - (d) allocation. This amendment would clarify current System behavior.<sup>55</sup>

The Exchange’s proposal to reorganize BX Options 3, Section 10(a)(1)(C)(1)(b)(2),<sup>56</sup> related to BX’s Price-Time Execution Algorithm, and replace this language with rule text similar

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<sup>54</sup> A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(iii) which describes the Size Pro-Rata Execution Algorithm.

<sup>55</sup> This proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) - (d) relates to BX’s Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(ii)(1)(b) – (d) which describes the Size Pro-Rata Execution Algorithm.

<sup>56</sup> Similar rule text describing entitlement for order of 5 contracts or fewer replacement is proposed within Options 3, Section 10(a)(1)(C)(2)(iii), relating to the Size Pro-Rata Execution Algorithm, and this rule text will cause current Options 3, Section 10(a)(1)(C)(2)(iii) which describes DMM Priority, to be redesignated as Options 3, Section 10(a)(1)(C)(2)(iv) to account for the new rule text.

to Phlx Options 3, Section 10(a)(1)(D) and redesignate the provision as BX Options 3, Section 10(a)(C)(1)(c)<sup>57</sup> does not impose an undue burden on competition. Reorganizing this part of the rule to mirror Phlx is not a substantive change. The Exchange is not otherwise amending the System, rather these changes are being made to conform the rule text to Phlx rule text, which more specifically describes the scenarios in which a Lead Market Maker would be entitled to Orders of 5 contracts or fewer. As is the case today, in order to be entitled to receive Orders for 5 contracts or fewer, the Lead Market Maker's quote must be at the better of the internal BBO or the NBBO with no other Public Customer or Directed Market Maker interest which has a higher priority. If the Lead Market Maker is quoting at the better of the internal BBO or the NBBO with other Public Customer or Directed Market Maker interest present which has a higher priority at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer, however the Lead Market Maker is eligible to receive such contracts pursuant to paragraph (a)(1)(C)(1)(b)(1)(e) for Price-Time Execution, and paragraph (a)(1)(C)(2)(vi) for Size Pro-Rata Execution, which describe the treatment of all other remaining interest after Lead Market Maker and Directed Market Maker allocations. The remainder of the proposed rule changes within Options 3, Section 10 which include renumbering, capitalizations, relocation of rule text, addition of headers and technical amendments are non-substantive.

#### Options 3, Section 15

The Exchange believes that its proposal to amend the ATR rule in Options 3, Section 15(b)(1) does not impose an undue burden on competition. The proposed rule change codifies existing ATR functionality by providing that ATR will not be available for AONs and MQOs, and therefore provides more certainty to Participants as to the application of the rule. The Exchange notes that the ATR functionality, including the exclusion of certain size contingency

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<sup>57</sup> Current BX Options 3, Section 10(a)(C)(1)(c) relates to DMM Priority, the Exchange also proposes to redesignate that section as new BX Options 3, Section 10(a)(C)(1)(d) to account for the new rule text.

order types from ATR protections, is not new or novel, and is available on other options exchanges.<sup>58</sup>

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>59</sup> and Rule 19b-4(f)(6) thereunder.<sup>60</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>61</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>58</sup> See, e.g., ISE Options 3, Section 15(a)(2)(A) (providing that ISE's ATR will not be available for AONs).

<sup>59</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>60</sup> 17 CFR 240.19b-4(f)(6).

<sup>61</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2021-003 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2021-003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2021-003 and

should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>62</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

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<sup>62</sup> 17 CFR 200.30-3(a)(12).